Supreme Court of the United States

OCTOBER TERM, 1941.

No. ——————.

UNITED STATES OF AMERICA, ACTING ON THE RELATION OF EDMOND C. FLETCHER, AND THE SAID EDMOND C. FLETCHER, INDIVIDUALLY, PETITIONER,

VS.

JOHN H. FAHEY, THOMAS D. WEBB, FRED W. CATLETT, WILLIAM F. STEPHENSON, PATRICK J. MALONEY, AND ROBERT L. NAGLE.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

THE OPINIONS OF THE COURTS BELOW.

The opinion of the United States Court of Appeals for the District of Columbia has not yet been officially reported, but is copied in the record (R. 20). The opinion of the district court below is in the record (R. 15).

II.

JURISDICTION.

The judgment of the United States Court of Appeals below was rendered on February 24, 1941 (R. 19). Petitioner's petition for a rehearing was considered and denied March 19, 1941 (R. 25). By order of Mr. Justice Black, dated June 10, 1941, the time within which to file this petition for a writ of certiorari was extended to and including June 30, 1941. The jurisdiction of this court is invoked under the provisions of Section 240 (a) of the Judicial Code, as amended by Act of February 13, 1925, Chapter 229 (43 Stat. 936), Section 347 (a), Title 28, United States Code.

III.

STATEMENT OF THE CASE.

A full statement of the case has been given in the foregoing petition, beginning at page 2, and is adopted here as though fully set forth. Emphasis is laid on the action of the court of appeals below, while refusing to consider the assignment of errors presented by the record before it, in retaining jurisdiction of the case and affirming the judgment of the district court below.

IV.

STATUTE INVOLVED.

The pertinent provisions of the Home Owners' Loan Act of 1933, 48 Stat. 128 *et seq.*, Chapter 64, are as follows:

"Definition.

Section 2. As used in this act—

(a) The term 'Board' means the Federal Home Loan Bank Board created under the Federal Home Loan Bank Act.

(b) The term 'Corporation' means the Home Owners' Loan Corporation created under Section 4 of this Act.

* * * * * * *

Creation of Home Owners' Loan Corporation.

Sec. 4. (a) The board is hereby authorized and directed to create a corporation to be known as the Home Owners' Loan Corporation, which shall be an instrumentality of the United States, which shall have authority to sue and be sued in any court of competent jurisdiction, federal or state, and which shall be under the direction of the board and operated by it under such bylaws, rules, and regulations as it may prescribe for the accomplishment of the purposes and intent of this section. The members of the board shall constitute the board of directors of the corporation and shall serve as such directors without additional compensation.

(b) The board shall determine the minimum amount of the capital stock of the corporation and is authorized to increase such capital stock from time to time in such amounts as may be necessary, but not to exceed in the aggregate $200,000,000. Such stock shall be subscribed for by the Secretary of the Treasury on behalf of the United States, and payments of such subscriptions shall be subject to call in whole or in part by the board and shall be made at such time or times as the Secretary of the Treasury deems advisable. The corporation shall issue to the Secretary of the Treasury receipts for payments by him for or on account of such stock, and such receipts shall be evidence of the stock ownership of the United States."

V.

SPECIFICATION OF ERRORS.

1. The court of appeals below erred in deciding that it does not require the act of a sovereign power to create a corporation.

2. The court of appeals erred in deciding that the Federal Home Loan Bank Board, by virtue of the power conferred upon it by Section 4 (a) of the Home Owners' Loan Act of 1933, could create the Home Owners' Loan Corporation, without obtaining a charter from the District of Columbia or one of the states of the Union.

3. The court of appeals erred in declaring that it, when sitting in a previous case, namely, *Fletcher* v. *Jones et al.*, 70 App. D. C. 179, 105 F. 2d 58, had decided that the Home Owners' Loan Corporation had been properly organized according to law and had complete corporate existence.

4. The court of appeals erred in refusing to consider and decide the question, duly presented by the record, of whether the undated and unsigned paper writing called a "Charter," as conceived, drafted, and adopted of record by the Federal Home Loan Bank Board on June 14, 1933, created the Home Owners' Loan Corporation as a body corporate, within the meaning of the language in Section 4 (a) of the Home Owners' Loan Act of 1933, to-wit, "The board is hereby authorized and directed to create a corporation to be known as the Home Owners' Loan Corporation.

5. The court of appeals erred in affirming the judgment of the district court below.

VI.

SUMMARY OF ARGUMENT.

Point A. The ruling of the court of appeals below that it does not require the act of a sovereign power to create a corporation is challenged for error.

Point B. The ruling of the court of appeals that the Federal Home Loan Bank Board, by virtue of the power conferred upon it by Section 4 (a) of the Home Owners' Loan Act of 1933, could create the Home Owners' Loan Corporation, without obtaining a charter from the District of Columbia or one of the states of the Union, is challenged for error.

Point C. The declaration of the court of appeals that, when adjudicating the previous case of *Fletcher* v. *Jones et al.*, 70 App. D. C. 179, 105 F. 2d 58, it decided that the Home Owners' Loan Corporation had been properly organized according to law and had complete corporate existence is challenged for error.

Point D. The refusal of the court of appeals to consider and decide the question, duly presented by the record, whether the undated and unsigned paper writing called a "Charter," as conceived, drafted, and adopted of record by the Federal Home Loan Bank Board on June 14, 1933, created the Home Owners' Loan Corporation as a body corporate, within the meaning of the language in Section 4 (a) of the Home Owners' Loan Act of 1933, to-wit, "The Board is hereby authorized and directed to create a corporation to be known as the Home Owners' Loan Corporation," amounts to a denial to the petitioner of his day in court.

Point E. Petitioner's amended complaint states a claim against the respondents upon which relief can be granted.

ARGUMENT.

POINT A.

The Ruling of the Court of Appeals That It Does Not Require the Act of a Sovereign Power to Create a Corporation Is Contrary to the Fundamental Laws of This Country.

The ruling of the court of appeals below that it does not require the act of a sovereign power to create a corporation is contrary to the fundamental laws existing in this country during the past 120 years, that is, since the Dartmouth College case in 1819, where Chief Justice Marshall said:

> "A corporation is an artificial being, invisible, intangible, and existing only in contemplation of law. Being the mere creature of law, it possesses only those properties which the charter of its creation confers upon it, either expressly, or as incidental to its very existence. These are such as are supposed best calculated to affect the object for which it was created. Among the most important are immortality; and, if the expression be allowed, individuality; properties by which a perpetual succession of many persons are considered as the same, and may act as a single individual. * * * It is chiefly for the purpose of clothing bodies of men, in succession, with these qualities and capacities, that corporations were invented, and are in use. By these means a perpetual succession of individuals are capable of acting for the promotion of the particular object, like an immortal being."
>
> *Dartmouth College* v. *Woodward*, 4 Wheat. 518, 536.

The above doctrine has been restated over and over by this court, and in the inferior courts, in a thousand cases, many of which are enumerated in 14a Corpus

Juris, page 246, under Note 69. As an illustration, this court has since declared:

> "The right or privilege to be a corporation, or to do business as such body, is one generally deemed of value to the incorporators, or it would not be sought in such numbers as at present. It is a right or privilege by which several individuals may unite themselves under a common name, and act as a single person, without dissolution or suspension of business and with a limited liability. *The granting of such right or privilege rests entirely in the discretion of the state.*"
>
> *Home Insurance Co.* v. *New York*, 134 U. S. 594.

In *Ashley* v. *Ryan*, 153 U. S. 436, 441, this court again said:

> "That the right to be a state corporation depends solely upon the grace of the state, and is not a right inherent in the parties is settled. * * * A franchise is a right, privilege, or power of public concern, which ought not to be exercised by private individuals at their mere will and pleasure, but should be reserved for public control and administration. * * * Under our system, their existence and disposal are under the control of the legislative department of the government, and cannot be assumed or exercised without legislative authority. * * * *No persons can make themselves a body corporate and politic without legislative authority.* Corporate capacity is a franchise."

The Congress may, and often does, create a corporation by its *special* act, like the Reconstruction Finance Corporation (47 Stat. 5, Ch. 8). But, in lieu of a special act, Congress may, and often does, direct the formation of a federal corporation under the general laws of the District of Columbia, which it enacted, and remit the selected incorporators, as its agents, to a compliance with these

laws. When this is done, charters are granted by the District of Columbia to these incorporators. For example, the Shipping Board Act of September 7, 1916, Chapter 451, 39 Stat. 728. In *Sloan Shipyards* v. *U. S. Fleet Corp.*, 258 U. S. 549, 564, this court said:

> "The Shipping Act of September 7, 1916, Chapter 451, 39 Stat. 728, * * *, established the United States Shipping Board and gave it power to form a corporation under the laws of the District of Columbia. * * * War was declared on April 6, 1917, and the corporation was formed on the 16th of the same month."

It is thus seen that the shipping board complied with the general incorporation laws of the District of Columbia, and thereby secured a charter in the name of the United States Shipping Board and Emergency Fleet Corporation. The word "form" a corporation, as used in that act, is synonymous with the word "create" as used in the Home Owners' Loan Act of 1933.

Furthermore, Congress has frequently conferred authority upon its selected agents, usually a responsible officer of the Government, to create or form a corporation on behalf of the United States, without specifying the state or the District of Columbia, from which to obtain a corporate right, privilege, charter, or franchise. In such instances, the selected incorporators proceed to the States of Delaware, New York, Washington, or elsewhere, and, upon complying with the laws thereof, obtain a charter or certificate of incorp.oration therefrom, after which they organize such corporations. This Honorable Court will take judicial knowledge of the general incorporation laws now in force in every state of the Union, as well as the District of Columbia. Fletcher on Corporations, Section 4117.

From the above authorities, it is seen that a grievous error has been committed in this case by the court of appeals below.

POINT B.

The Federal Home Loan Bank Board, by Virtue of the Power Conferred upon It by Section 4 (a) of the Home Owners' Loan Act of 1933, Could Not Create the Home Owners' Loan Corporation, Without Obtaining a Charter from the District of Columbia or One of the States.

The ruling of the court of appeals below that the Federal Home Loan Bank Board, by virtue of the power conferred upon it by Section 4 (a) of the Home Owners' Loan Act of 1933, could create the Home Owners' Loan Corporation, without obtaining a charter from the District of Columbia or one of the states, is erroneous and contrary to law and the decisions of this Honorable Court. The pertinent language in Section 4 (a), *supra*, is, to-wit, "The Board is hereby authorized and directed to *create a corporation* to be known as the Home Owners' Loan Corporation." The petitioner has already demonstrated from the authorities that it is the charter which creates a corporation, private or public, and it is the sovereign which creates the charter. The sovereign power, then, is the source from which all corporate franchises flow. And the authorities aforementioned, under Point A herein, show the existence of general incorporation laws in the several states of the Union and the District of Columbia, authorizing the formation of corporations. These laws are higher than the Federal Home Loan Bank Board, a creature of the law, and must be obeyed. *United States* v. *Lee*, 106 U. S. 196, 227. The amended complaint shows that this board, on June 14, 1933, disregarded such laws, each and all, and failed to even apply to any sovereign, federal or state, for the grant of a charter for and in the name of the Home Owners' Loan Corporation (R. 6). Hence, the latter is not even a *de facto* corporation. See *Harrill* v. *Davis*, 168 Fed. (C. C. A.—8th Cir.) 187, 192, which deals very fully on this subject by saying:

> "To give a body of men assuming to act as a corporation, where there has been no attempt to comply with the provisions of any law authorizing them to become such, the status of a *de facto* corporation might open the door to frauds upon the public."

As before stated, this act merely authorized and directed that board to *create a corporation,* without giving it a mode of procedure. Congress, therefore, naturally expected its grantees to create a corporation (not a charter) by such means as were then known and appropriate. *Kohl* v. *United States,* 91 U. S. 367. These means were, to comply with the general incorporation laws of the several states and the District of Columbia; for there was no other mode in existence in this country. What, for instance, if the Congress had imposed upon the President the duty of acquiring privately owned lands for the United States for public use, without prescribing a mode of procedure. Could the President, in the execution of such power, resort to an executive order or even a proclamation, as a means for securing the title to the lands sought? The answer must be in the negative. On the contrary, he would be expected to comply with the laws in force in the state in which the lands were situated, as the means known and appropriate, by securing a deed of conveyance from the owner of the lands. We now come to the meaning of the word "create," as used in this act. This word is defined in the Kansas Statutes, Chapter 17, Section 201, thus:

> "Private corporations may be *created* by the voluntary association of five or more persons for the purposes and in the manner mentioned in the following sections of this article."

And the same word "create" is well defined in Fletcher on Corporations, Section 126, as follows:

> "To create in the broad sense is to bring into being, * * *. It has not been usual to give 'creation'

so broad a scope, and this chapter is restricted to the 'incorporation', by which is meant the performance of conditions, acts, deeds, and writing of the incorporators, and the official acts, certifications or records, which give the corporation its existence."

Moreover, when this act selected the Federal Home Loan Bank Board, composed of the respondents here, Congress made them the incorporators of the proposed Home Owners' Loan Corporation.

> "The principle that a corporate charter is a *contract* between the state and the incorporators of a corporation was established in *Trustees of Dartmouth College* v. *Woodward*, 4 Wheat. 518, 629, and has been reaffirmed many times."
>
> *Northwest Steel Rolling Mills* v. *Commissioner of Internal Revenue*, 110 F. 2d 286.

If so, then we find the members of the Federal Home Loan Bank Board, when they granted a charter to the Home Owners' Loan Corporation, entering into a contract with themselves, as incorporators. In other words, they sought to give to themselves the right to exist as a body corporate under the name of the Home Owners' Loan Corporation. Such philosophy of government is not only absurd, but dangerous to the social compact and the affairs of this nation. Not only this but we find in the Home Owners' Loan Act of 1933, no authority to this Board to grant or issue any charter whatever, and no mention of the word "charter". Hence, they acted without authority. This Government is a government of delegated, limited, and enumerated powers. *United States* v. *Harris*, 106 U. S. 629, 635; *Kansas* v. *Colorado*, 206 U. S. 46, 87. And, as said by this court in *United States* v. *Lee*, 106 U. S. 196,

> "No man in this country is so high that he is above the law. No officer of the law may set that law at defiance with impunity. All the officers of the government, from the highest to the lowest, are creatures of the law, and are bound to obey it."

In *Hooe* v. *United States,* 218 U. S. 322, this court further said:

> "If an officer of the United States assumes, *by virtue alone of his office,* and without the authority of Congress, to take such matters under his control, he will not, in any legal or constitutional sense, represent the United States, and what he does or omits to do, without the authority of the Congress, cannot create a claim against the government 'founded upon the Constitution.' "

Moreover, the issuance of a charter to a corporation is a legislative function only, and it cannot be delegated to others. In *State* v. *Simmons,* 32 Minn. 540, 542, the court said:

> "The granting of all charters of incorporation involves the exercise of legislative functions. The proposition (says Dillon) which lies at the foundation of the law of corporations of the country is that they all, public or private, exist and can exist only by virtue of express legislative enactment, creating or authorizing the creation of the corporate body."

And further declared (p. 543):

> "One of the settled maxims of constitutional law is that legislative powers cannot be delegated. Where the constitution has located the law-making power it must remain. The department to whose judgment and wisdom it has been intrusted cannot abdicate this power and relieve itself of the responsibility, by choosing other agencies upon whom it shall be devolved. Cooley, Const. Lim., 139."

The foregoing authorities clearly show that the Federal Home Loan Bank Board, designated by Congress to "create a corporation to be known as the Home Owners' Loan Corporation," was in order to execute that power obliged to procure from a sovereign state, or the District of Columbia, a charter for and in the name of the Home Owners' Loan Corporation. *For such procedure is a requirement of the laws of the sovereign,* and such requirement has heretofore been met by officers of the United States in more than forty other instances.

POINT C.

The Declaration of the Court of Appeals That, When Adjudicating the Previous Case of Fletcher v. Jones et al., 70 App. D. C. 179, 105 F. 2d 58, It Decided That the Home Owners' Loan Corporation Had Been Properly Organized According to Law and Had Complete Corporate Existence Is Erroneous.

The declaration of the court of appeals that, when adjudicating the previous case of *Fletcher* v. *Jones et al.*, 70 App. D. C. 179, 105 F. 2d 58, it decided that the Home Owners' Loan Corporation had been properly organized according to law and had complete corporate existence is wholly erroneous. *Nowhere* in the opinion of that court in the case cited can such a declaration be found. There are, in this opinion, about 14 errors of law only, but they will not be fully discussed in this brief. Mention will be made, however, of the fact that that court added the word "itself" to the Home Owners' Loan Act of 1933, and then proceeded to construe such statute as amended by the court. There the court declared:

> "The *method* provided by the present act was that the Federal Home Loan Bank Board should *itself* create the Home Owners' Loan Corporation."

And that court, by this declaration, made it appear that the act itself had provided a "method" which that board should follow, yet the act is silent in that aspect. Moreover, in the record in *Fletcher* v. *Jones et al., supra,* there was no undated and unsigned paper writing called a "Charter" of the Home Owners' Loan Corporation, and so the court of appeals never saw it. Yet that court, in an effort to supply the omission, resorted to the following amazing declaration:

> "*We take judicial notice of the fact that the Federal Home Loan Bank Board issued a charter to the Home Owners' Loan Corporation,* immediately after the act was approved in June, 1933; organized the

> corporation and began its work six months prior to the transaction with Edna L. McCutchen, which occurred in January, 1934. These official acts have been recorded in the records and reports of the board, which are public documents and to which reference properly may be made for this purpose, even though formal proof thereof was not made in the court below."

Yet the Act of June 13, 1933, failed to authorize that bank board to "issue a charter" to the Home Owners' Loan Corporation, nor did it even mention a *charter;* and the court of appeals below certainly has no power and no duty to take judicial notice of a *void* thing—a thing which has no legal existence. *Case* v. *Kelly,* 133 U. S. 21, 27. And only one month prior to the above judicial declaration, the same court of appeals *refused* to take judicial notice of a charter of a corporation created under the incorporation laws of the District of Columbia. See *White* v. *Central Dispensary and Emergency Hospital,* 69 App. D. C. 122, 99 F. 2d 355. In *Hopper* v. *Covington,* 118 U. S. 148, 151, this court said:

> "When the law confers *no authority to issue the bonds in question,* the mere fact of their issue cannot bind the town to pay them, even to a purchaser before maturity and for value (citing cases)."

And in *Daviess County* v. *Dickman,* 117 U. S. 657, 665, it was said:

> "An officer's certificate of a fact which he has no authority to determine is of no legal effect. *Dixon County* v. *Field,* 111 U. S. 83."

These principles are quite applicable to the Federal Home Loan Bank Board in its endeavor, by its own edict, to create a $200,000,000 corporation upon behalf of the United States.

Again, in this particular case, the court of appeals further said:

"The creation and legal existence of the Home Owners' Loan Corporation has been *referred to and noticed* on a number of occasions, most recently by the Supreme Court itself in *Graves* v. *New York ex rel. O'Keefe*, 59 S. Ct. 595, 596, 83 L. Ed. 927."

And, again, that court was mistaken. For, in *Graves* v. *New York ex rel. O'Keefe*, as above cited, the petitioner, by his petition for a writ of certiorari, admitted the existence of the Home Owners' Loan Corporation as a body corporate, so there was no question raised as to its legal existence as such. And this court, speaking through Mr. Justice Stone, said:

> *"For the purposes of this case we may assume that the creation of the Home Owners' Loan Corporation was a constitutional exercise of the powers of the Federal Government."*

In *Pittman* v. *Home Owners' Loan Corporation*, 308 U. S. 21, 32, where the validity of that respondent was not in issue, this court said:

> *"We assume here*, as we assumed in *Graves* v. *New York ex rel. O'Keefe*, 306 U. S. 466, that the creation of the Home Owners' Loan Corporation was a constitutional exercise of the congressional power."

Hence, in view of the cursory analysis of the opinion rendered by the court of appeals below in *Fletcher* v. *Jones et al., supra*, it is seen that the same court was quite mistaken in its opinion in the case at bar (R. 21) when, in attempting to say what it held in the former case, it said:

> "We examined the statute and held that Home Owners' Loan Corporation had been properly organized according to law and had complete corporate existence."

For the above language is far afield of the language, "We take judicial notice of the fact that the Federal Home Loan Bank Board issued a charter to the Home Owners' Loan Corporation."

POINT D.

The Refusal of the Court of Appeals to Consider and Decide the Question, Duly Presented by the Record, Whether the Undated and Unsigned Paper Writing Called a "Charter," As Conceived, Drafted, and Adopted of Record by the Federal Home Loan Bank Board on June 14, 1933, Created the Home Owners' Loan Corporation As a Body Corporate, Within the Meaning of the Language in Section 4 (a) of the Home Owners' Loan Act of 1933, To-wit, "The Board Is Hereby Authorized and Directed to Create a Corporation to Be Known As the Home Owners' Loan Corporation," Amounts to a Denial to Petitioner of His Day in Court.

The above subject matter is so lengthy that it is not repeated. The court of appeals below, in its opinion (R. 20-21), made no reference to this undated and unsigned paper writing called a "Charter," although duly presented by the record and assignments of error, and that court presents no explanation as to the reason why it failed to consider and decide its legal effect. For that court to retain the case and affirm the judgment of the district court below, without considering the errors assigned, is to enlarge its jurisdiction and usurp powers not conferred upon it by the law of its organization. It has evidently misconceived its duty arising under Section 26, Title 18, of the Code of the District of Columbia, from which it derives its powers and judicial duty. It may well be questioned whether a judgment upon the merits can be affirmed by an appellate court without considering the record as made. The substantial rights of the parties necessarily depend upon the consideration and decision of the assignments of error; otherwise why make a record at all. At least, such practice amounts to a denial to petitioner of his day in court. *Lutcher & Moore Lumber Co.* v. *Knight*, 217 U. S. 257, 267. In *Twist* v. *Prairie Oil & Gas Co.*, 274 U. S. 684, 692, this court held that the Circuit Court of Appeals for the Eighth Circuit, while

refusing to consider the errors assigned, and retaining the case, could not adjudicate the merits by affirming the judgment of the trial court; and, because of such refusal, granted *certiorari* and reversed and remanded the case, requiring the circuit court of appeals to consider the errors assigned. See, also, the like cases of *Brown* v. *Fletcher*, 237 U. S. 583, 588; *Liberty Oil Co.* v. *Condon National Bank*, 260 U. S. 235; *Krauss Bros. Co.* v. *Mellon*, 276 U. S. 386, 394.

While the foregoing cases announce the general procedure, yet there are cases in which this court will adjudicate the assignment of errors on the merits, rather than to remand the case to the court of appeals below. *Lamar* v. *United States*, 241 U. S. 103, and *Cole* v. *Ralph*, 252 U. S. 286, were cases of this sort.

POINT E.

Petitioner's Amended Complaint States a Claim Against The Respondents upon Which Relief Can Be Granted.

The petitioner's amended complaint (R. 2-13) well states a claim against the respondents upon which relief can be granted. All the facts therein pleaded, if well pleaded, were admitted by respondents by their motion to dismiss the complaint on the ground of insufficiency. This ground requires a discussion as to what is a "claim" as thus used, and it is answered by this court. In *Hobbs* v. *McLain*, 117 U. S. 567, 575, it was said:

> "What is a claim against the United States is well understood. It is a right to demand money from the United States."

In *United States* v. *Cohn*, 270 U. S. 339:

> "It is clear, in the light of the context, that in the present statute, the provision relating to the payment and approval of a 'claim upon or against' the government relates solely to the payment or approval

> of a claim for money or property to which a right is asserted against the government, based upon the government's own liability to the claimant."

In *United States* v. *Mercur Corporation*, 83 F. 2d 178, which involved the same statutes as are involved here, the court said:

> "In order to bring a case within the statute we have referred to, it is necessary to show that a claim is presented against the United States, or *in rem* against its property."

The amended complaint in the record here shows, among other things, that the suit arises under Sections 231, 232, 234, and 235, Title 31, United States Code (1934 Ed.); that the respondents, acting for the Federal Home Loan Bank Board, by letter of June 15, 1933, made a representation to the Secretary of the Treasury of the United States, to the effect that they had, on June 14, 1933, pursuant to the Home Owners' Loan Act of June 13, 1933, created the Home Owners' Loan Corporation, with a capital stock of $200,000,000, divided into 2,000,000 shares, each having a par value of $100, and then made a demand upon the Secretary of the Treasury to subscribe for all of the capital stock, upon behalf of the United States, and that this was done by the acting Secretary of the Treasury by letter of June 19, 1933, addressed to and received by the Federal Home Loan Bank Board. The complaint further shows and alleges that said board, well knowing that it had failed to procure from any sovereign power, federal or state, a corporate charter for and in the name of the Home Owners' Loan Corporation, nor taken any steps in that behalf, as required by the general incorporation laws of the several states of the Union and the District of Columbia, and well knowing of the nonexistence of such Home Owners' Loan Corporation as a body corporate, and its lack of legal capacity to receive money from the United States, nevertheless, made seventeen calls or claims upon the Secretary of the Treasury of

the United States, between June, 1933, and December 11, 1934, for the payment of all of the purported capital stock of said pretended Home Owners' Loan Corporation, as a result of which the sum of $200,000,000 was obtained by these respondents, acting in the name of the Home Owners' Loan Corporation, from the Government of the United States. The amended complaint further alleges that said respondents then and there well knew that said representations, calls, and claims were false, fictitious, and fraudulent as against the Government of the United States.

The foregoing recital of the facts, with the other facts set out in the complaint, very clearly establish a claim against the respondents in this action. Yet the trial court dismissed the suit on the alleged authority of the case of *Fletcher* v. *Jones et al., supra*, thus preventing the petitioner from having an opportunity to be heard on the merits before a jury. Not only this, but the court of appeals below affirmed such dismissal upon the same authority.

Conclusion.

It is respectfully submitted that this case is one calling for the exercise by this court of its supervisory powers, in order that it may finally and permanently settle the questions involved herein, and that to such end a writ of certiorari should be granted so that this court may review the action and decision of the United States Court of Appeals for the District of Columbia, and finally reverse it.

Respectfully submitted,

United States of America,
Acting on the Relation
of Edmond C. Fletcher,
and the Said Edmond C.
Fletcher, Individually,
By EDMOND C. FLETCHER,
Pro se,
Petitioner.